

Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. * Elevation in feet (NGVD)	ACTION: Final rule. SUMMARY: The Department of Energy (DOE) today issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR) to add regulations regarding the acquisition of Federal Information Processing Resources by contracting. This rule implements pertinent parts of the Federal Information Resources Management Regulation (FIRMR) to prescribe internal DOE policies relevant to the acquisition of Federal Information Processing (FIP) resources. The rule is necessary to establish policy regarding contracting authority for heads of contracting activities and the responsibilities of the contracting officer to comply with the delegated procurement authority provided by the General Services Administration. Further, the rule sets forth the Department's policy concerning contractor acquisition of FIP resources. EFFECTIVE DATE: This final rule will be effective September 5, 1995. FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR-51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, telephone 202-586-8250. SUPPLEMENTARY INFORMATION: I. Background. A. Discussion B. Section-by-Section Analysis II. Public Comments. III. Procedural Requirements. A. Regulatory Review B. Review Under Executive Order 12778 C. Review Under the Regulatory Flexibility Act D. Review Under the Paperwork Reduction Act E. Review Under Executive Order 12612 F. National Environmental Policy Act I. Background A. Discussion The FIRMR, codified at 41 CFR Part 201, is the primary Governmentwide regulation for the acquisition, management, and use of FIP resources. The FIRMR is prepared, issued and maintained by the Administrator of the General Services Administration (GSA) under the authority of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486). Subpart 201.39 of the FIRMR prescribes the contracting policies and procedures to be followed by Federal agencies in acquiring FIP resources. The policies and procedures set out in FIRMR 201-39 are unique to the acquisition of FIP resources, and are to
Approximately 700 feet downstream of the Township of Eulalia's downstream corporate limits	*1579	TENNESSEE		
Approximately 0.4 mile upstream of the Township of Eulalia's upstream corporate limits	*1632	Lauderdale County (Unincorporated Areas) (FEMA Docket No. 7128)		
Maps available for inspection with the Ms. June Bunnell, Township Secretary, RD 3, Coudersport, Pennsylvania.		<i>Cane Creek:</i> At eastern corporate limits with Town of Ripley	*333	
Marion Center (Borough), Indiana County (FEMA Docket No. 7120)		At Illinois Central Gulf Railroad	*335	
<i>Unnamed Tributary to Pine Run:</i> Approximately 1,300 feet downstream of South Manor Street (State Route 403)	*1,257	Maps available for inspection at the Lauderdale County Executive's Office, County Courthouse, 100 Court Square, Ripley, Tennessee.		
Approximately 1,240 feet upstream of State Route 1025	*1,324	WISCONSIN		
<i>Tributary to Unnamed Tributary to Pine Run:</i> At the confluence with Unnamed Tributary to Pine Run	*1,271	Clintonville (City), Waupaca County (FEMA Docket No. 7128)		
Approximately 0.6 mile upstream of confluence with Unnamed Tributary to Pine Run	*1,317	<i>Honey Creek:</i> Just upstream of South Main Street	*812	
Maps available for inspection at the Marion Center Milling Company, 101 South Manor, Marion Center, Pennsylvania.		Just downstream of West 1st Street	*820	
Newell (Borough), Fayette County (FEMA Docket No. 7128)		<i>Pigeon River:</i> Approximately 50 feet upstream of Klemp Road	*794	
<i>Monongahela River:</i> At downstream corporate limits	*769	Just upstream of Hemlock Street	*808	
At upstream corporate limits ...	*771	Maps available for inspection at the City Hall, 50 Tenth Street, Clintonville, Wisconsin.		
Maps available for inspection at the Newell Borough Building, Second Street, Fayette City, Pennsylvania.		Ephraim (Village), Door County (FEMA Docket No. 7128)		
Stroud (Township), Monroe County (FEMA Docket No. 7128)		<i>Lake Michigan (Green Bay):</i> Entire shoreline within the community	*585	
<i>McMichaels Creek:</i> At downstream corporate limits	*425	Maps available for inspection at the Village of Ephraim Administration Office, 10005 Norway Road, Ephraim, Wisconsin.		
At upstream corporate limits ...	*458	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")		
Maps available for inspection with Mr. W. J. Gretkowski, Chairman of the Township of Stroud, Monroe County, 1211 North 5th Street, Stroudsburg, Pennsylvania.		Dated: July 28, 1995.		
		Richard T. Moore, <i>Associate Director for Mitigation.</i> [FR Doc. 95-19219 Filed 8-3-95; 8:45 am]		
		BILLING CODE 6718-03-P		
		DEPARTMENT OF ENERGY		
		48 CFR Part 939		
		RIN 1991-AA81		
		Acquisition Regulation; Acquisition of Federal Information Processing Resources by Contracting		
		AGENCY: Department of Energy.		

be used in conjunction with the general Federal contracting policies and procedures of the Federal Acquisition Regulation (FAR).

Part 39 of the FAR requires agencies to follow the policies and procedures contained in the FAR when acquiring FIP resources, except in those areas where the FIRM prescribes special policies, procedures, provisions, or clauses (see FAR 39.001). In addition, FAR 39.002(b) includes FIRM 201-39 as an appendix to the FAR as an aid to contracting officials when acquisitions are conducted under GSA's exclusive procurement authority.

Section 201-3.301 of the FIRM permits agencies to issue regulations to implement or supplement the FIRM in their agency acquisition regulations, where such regulations pertain solely to the acquisition of FIP resources by contracting. These amendments amend the DEAR to add a new Part 39, Acquisition of Federal Information Processing Resources by Contracting and implement pertinent parts of the FIRM to prescribe internal DOE policies and procedures relevant to the acquisition of FIP resources. The amendments now promulgated in this final rule were previously published in the **Federal Register** in a notice of proposed rulemaking on December 2, 1993 (58 FR 63556).

Many of the proposed amendments contained in the notice of proposed rulemaking concerned process or procedural matters relating to the acquisition of FIP resources. Since the publication of that notice of proposed rulemaking, efforts began throughout the Administration to simplify regulations and streamline the acquisition process. Accordingly, consistent with the intent of the National Performance Review and the Department of Energy's own contract reform initiative, the content of the proposed rule was reviewed subsequent to its publication on December 2, 1993 to determine whether the rule contained unnecessary or process-oriented requirements not suited for regulatory coverage. As a result of that review, it was determined that certain sections of the proposed rule addressed matters of a purely procedural or process nature, and could appropriately be removed from the regulatory coverage without any degradation to the effectiveness of the Department's FIP resources management and acquisition. The Department intends to include, where appropriate, this information in internal guidance documents. Following is a section-by-section summary of the final rule which also indicates which

sections in the proposed rule have been deleted and which were retained.

B. Section-by-Section Analysis

The regulations at 48 CFR Part 9 are amended to add a new Part 39, Acquisition of Federal Information Processing Resources by Contracting. This new part consists of 54 subparts.

Section 939.001 is added to prescribe the scope of Part 39. However, language in the original notice of proposed rulemaking permitting contracting activities to establish local procedures that may be needed to further implement the requirements of Part 39 is deleted.

Subpart 939.1 addresses general matters concerning the FIRM system. Section 939.101-3 of the notice of proposed rulemaking, which provided that the procurement request initiator make the initial assessment of FIRM applicability to a particular acquisition, is removed from this final rule.

Section 939.101-5 explains the numbering system of Part 39.

Section 939.102, which explained the existing relationship of the FAR, the DEAR, and the FIRM, is not included in this final rule.

Section 939.104-1 provides policy on the processing of deviations to the FIRM within DOE. Language in the notice of proposed rulemaking that addressed the nature of the information to be included in a deviation request is not included in this final rule.

Section 939.106-3 addresses the contracting authority of individual Heads of the Contracting Activity and the responsibilities of the contracting officer.

The procedures for processing agency procurement requests originally set out in the notice of proposed rulemaking in Section 939.106-70 is not included in this final rule.

Subpart 939.2 provided definitions for words and terms used in Part 39. This section is being deleted from the final rule.

Section 939.501-70 of the notice of proposed rulemaking is not being included in the final rule. That section permitted the contracting officer to issue a synopsis for a solicitation in advance of receipt of procurement authority from GSA.

Section 939.602-270 of Subpart 939.6 establishes review and approval requirements for solicitations and contracts for, or using, outdated FIP equipment.

Section 939.670 permitted the issuance of draft Statements of Work/ specifications or draft solicitations, prior to actual receipt of procurement authority to permit DOE to obtain

information from the marketplace. This section is not included in the final rule.

In the notice of proposed rulemaking, Subpart 939.10 established the responsibilities of the procurement request initiator and the contracting officer regarding specifications for security and privacy requirements (Section 939.1001-70) and Federal standards (Section 939.1002-70) applicable to an acquisition for FIP resources. Section 939.1003-70 addressed the requirements of Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies." The only coverage retained from the notice of proposed rulemaking is the language of Section 939.1003-70 authorizing the Head of the Contracting Activity to exempt requirements from the requirements of the Executive Order.

Section 939.1701-470 of Subpart 939.17, as set out in the notice of proposed rulemaking, provided guidance governing the period of performance of contracts for FIP services or support services. This section is removed in the final rule.

Section 939.4470 of Subpart 939.44 prescribes the policies governing contractor acquisitions of FIP resources. A new paragraph (c) has been added to clarify situations where a management and operating contractor may acquire FIP resources for use by another contractor of DOE.

II. Public Comments

DOE invited interested persons to participate in this rulemaking by submitting data, views or arguments with respect to the DEAR amendments set forth in the notice of proposed rulemaking. The public comment period closed on January 31, 1994, a period of 60 days. During that public comment period, no comments were received by DOE.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing

regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a

policy action. This rule will not affect states.

F. National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment. This rule delegates contracting authority under categorical exclusion A6 of Subpart D.

List of Subjects in 48 CFR Part 939

Government Procurement.

Issued in Washington, D.C. on July 26, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, 48 CFR Chapter 9 is amended as set forth below:

1. A new Part 939, Acquisition of Federal Information Processing Resources by Contracting, consisting of Subparts 939.0 through 939.53, is added to read as follows:

PART 939—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES BY CONTRACTING

Subpart 939.0—Scope of Part

Sec.
939.001 Scope.

Subpart 939.1 Federal Information Resources Management Regulation (FIRMR) System

939.101-5 Arrangement of part.
939.104-1 Deviations from the FIRMR.
939.106-3 Contracting authority and responsibilities.

Subparts 939.2 through 939.54 [Reserved]

Subpart 939.6 Competition Requirements
939.602-270 Outdated FIP equipment.

Subparts 939.7 through 939.9 [Reserved]

Subpart 939.10 Specifications, Standards, and Other Purchase Descriptions
939.1003-70 Purchase of Energy Efficient Computers (Energy Star)

Subparts 939.11 through 939.43 [Reserved]

Subpart 939.44 Subcontracting policies and procedures

939.4470 Contractor acquisitions of FIP resources.

Subparts 939.45 through 939.53 [Reserved]

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 939.0 Scope of Part

939.001 Scope.

This part sets forth the policies that apply to the contracting for Federal Information Processing (FIP) resources by the Department of Energy (DOE).

Subpart 939.1 Federal Information Resources Management Regulation (FIRMR) System

939.101-5 Arrangement of part.

For consistency with the FIRMR and the FAR, part 939 is arranged in 54 subparts. Within each subpart, sections and subsections are numbered to correspond to like divisions of the FIRMR where the intent of the part 939 sections and subsections is to implement the FIRMR. Where the specific section or subsection is intended to supplement the FIRMR, or where specific FIRMR coverage does not exist, the section or subsection number is assigned a number of 70 or above.

939.104-1 Deviations from the FIRMR.

(a) Only the General Services Administration (GSA) can authorize class deviations and individual deviations from the FIRMR. Within DOE, contracting officers shall submit requests for deviations from the FIRMR to the Headquarters Office of Clearance and Support for approval and subsequent processing with GSA.

(b) *Approval Requirements.* The Head of the Contracting Activity (HCA), after coordination with local counsel, shall concur in requests for deviations prior to submission to the Office of Clearance and Support. The Procurement Executive shall approve all requests for deviations prior to submission of the request to GSA.

939.106-3 Contracting authority and responsibilities.

(a) In instances where a specific acquisition delegation of procurement authority is not required under (FIRMR) 41 CFR 201-20.305-3, Specific Acquisition Delegations, each HCA may acquire FIP resources up to 50 percent of the regulatory delegation thresholds prescribed in (FIRMR) 41 CFR 201-20.305-1, Regulatory Delegations,

unless different thresholds have been established either in the HCA's delegation of contracting authority, or in a specific agency delegation from GSA under (FIRM) 41 CFR201-20.305-2, Specific Agency Delegations of Procurement Authority (DPA); or, in internal DOE guidance documents.

(b) The contracting officer is responsible for ensuring compliance with all terms, conditions, and limitations imposed on DOE under a specific acquisition Delegation of Procurement Authority (DPA).

(c) The contracting officer shall not award a contract, or a modification to an existing contract, when the value of the FIP resources portion of the award, including the value of any options, exceeds DOE's delegated FIP procurement authority redelegated to the HCA by the DSO. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds DOE's delegated procurement authority, DOE shall obtain a revised delegation from GSA prior to award. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds the HCA's redelegated procurement authority for that acquisition, the contracting officer shall have the redelegation revised, in accordance with internal DOE guidance documents, prior to award.

Subpart 939.2 through 939.5 [Reserved]

Subpart 939.6 Competition Requirements

939.602-270 Outdated FIP equipment.

Solicitations and contracts for, or using, outdated FIP equipment shall be submitted to the Office of Clearance and Support for review and approval. The Office of Information Management shall review these documents and make the decision whether to allow the acquisition or use of outdated FIP equipment.

Subparts 939.7 through 939.9 [Reserved]

Subpart 939.10 Specifications, Standards, and Other Purchase Descriptions

939.1003-70 Purchase of Energy Efficient Computers (Energy Star).

Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies," requires agencies to acquire microcomputers, including personal computers, monitors, and printers, that meet the "Energy Star" requirements established by the Environmental Protection Agency for energy efficiency. Solicitations for microcomputers and

peripheral equipment, issued after October 21, 1993, are required to include a requirement that equipment meet the "Energy Star" standard, unless an exemption has been provided by the Head of the Contracting Activity as authorized under section 1(a) of Executive Order 12845.

Subparts 939.11 through 939.43 [Reserved]

Subpart 939.44 Subcontracting Policies and Procedures

939.4470 Contractor acquisitions of FIP resources.

(a) *Management and operating (M&O) contracts.* Except as provided in paragraph (c) of this section, M&O contractors and their subcontractors shall not be used to acquire FIP resources unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts.* Where it has been determined that a contractor (other than an M&O contractor or its subcontractor) will acquire FIP resources either for sole use by DOE employees or for the furnishing of the FIP resources as government-furnished property under another contract, DOE will obtain any needed procurement authority from GSA prior to having the contractor acquire the FIP resources.

(c) *Consolidated contractor acquisitions.* When common FIP resource requirements in support of DOE programs have been identified and it is anticipated that the consolidation of such requirements will promote cost or other efficiencies, the Designated Senior Official for Information Management may authorize an M&O contractor to acquire FIP resources for use by the following:

- (1) One or more other contractor(s) performing on-site at the same DOE-owned or -leased facility as the M&O contractor, or
- (2) Other M&O contractors.

Subparts 939.45 through 939.53 [Reserved]

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BILLING CODE 6450-01-P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: The Commission is suspending the effectiveness of its recent revisions to the receipt provisions of its Single State Insurance Registration regulations. The Commission is acting in response to a petition by state interests. The suspension will maintain the status quo while interested parties consider alternatives to the existing registration system.

EFFECTIVE DATES: Effective August 4, 1995, § 1023.5, as revised at 60 FR 30011, June 7, 1995, is suspended from August 4, 1995, until January 1, 1997. Section 1023.5 is reinstated effective August 4, 1995, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927-5299 or Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: In a decision in *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993), notice published at 58 FR 28932 on May 18, 1993, the Commission adopted final regulations that replaced a multi-state motor vehicle and operating authority registration system with a simplified, single-state, insurance-based registration system. The Commission acted pursuant to Congressional revisions to 49 U.S.C. 11506—Registration of Motor Carriers by a State. On judicial review, in *Nat'l Ass'n of Regulatory Util. Comm'rs v. ICC*, 41 F.3d 721 (D.C. Cir. 1994), the court found that the Commission had improperly balanced conflicting policy goals in adopting regulations giving motor carriers the authority to copy the registration receipts required by law to be kept in each motor vehicle. The court remanded the matter to the Commission for further consideration.

Upon consideration of the court's opinion and the comments filed by interested parties, the Commission adopted final rules revising the receipt provisions of the regulations in a decision served June 6, 1995, and notice published at 60 FR 30011 on June 7, 1995. Under the revised rules at 49 CFR 1023.5, states will issue official copies of registration receipts, and motor carriers will be required to maintain an official copy in each reported motor vehicle. Motor carrier copying of receipts will be prohibited. The new rules took effect July 7, 1995, in order to cover filings relating to the 1996 registration year.

By a petition filed July 11, 1995, the National Conference of State